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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,557	07/06/2005	Shlomo Elfanbaum	54/8	5832
44596 7590 05/11/2009 DR. MARK M. FRIEDMAN C/O BILL POLKINGHORN - DISCOVERY DISPATCH 9003 FLORIN WAY UPPER MERLBORO, MD 20772				
EXAMINER				
GEBREMICHAEL, DRUK A				
ART UNIT		PAPER NUMBER		
3715				
NOTIFICATION DATE		DELIVERY MODE		
05/11/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/541,557

Applicant(s)

ELFANBAUM, SHLOMO

Examiner

BRUK A. GEBREMICHAEL

Art Unit

3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/26/2009 has been entered.
2. Currently, claims 1-17 have been cancelled. Claims 18 and 23 have been amended. Therefore, claims 18-28 are pending in this application.

Response to Amendment

3. Applicant's amendment to claim 23 is sufficient to overcome the 35 U.S.C. 112, second paragraph rejection set forth in the previous office action. Accordingly, the Examiner withdraws the rejection.

Claims Objection

4. Claim 18 is objected to due to the following informalities; the phrase "so as convert the emotional feeling" in line 12-13 of this claim is believed to be a typographical error for "so as to convert the emotional feeling". Appropriate correction is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- Claims 18-28 are rejected under 35 USC 101 as being directed to non-statutory subject matter because these are method or process claims that do not transform underlying subject matter (such as an article or materials) to a different state or thing, nor are they tied to another statutory class (such as a particular machine). See Diamond v. Diehr, 450 U.S. 175, 184 (1981) (quoting Benson, 409 U.S. at 70); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978) (citing Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)). See also In re Bilski (Fed Cir., 2007-1130, 10/30/2008) where the Fed. Cir. held that method claims must pass the "machine-or-transformation test" in order to be eligible for patent protection under 35 USC 101.

For instance, even if the preamble of claim 18 recites "a computer-aided method", the body of this claim appears to be silent with regard to any statutory element (such as a device or an apparatus) that would be utilized to implement the method steps.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- Claims 18-20, 22, 24 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 4,931,934 in view of Lonski 6,338,039.

Regarding claim 18, Snyder discloses the following claimed limitations, a computer-aided method for improving a user's emotional state comprising receiving from the user attributes of emotion perceived as influencing his general emotional state (col.4, lines 29-34), a weighting factor for each of said attributes of emotion representing a degree of influence each of said attributes of emotion bears on his general emotional state (col.4, lines 48-53), receiving from the user an emotion feeling input representing the emotion feeling of the user at a particular moment (col.5, lines 8-15), applying a first algorithm to the attributes of emotions and the associated weighting factors inputted by the user so as convert the emotional feeling inputted by the user into a happiness-index reflective of the emotional feeling, the attributes of emotion, and the weighting factors inputted by the user (col.5, lines 10-30 and FIG 5).

Snyder does not explicitly disclose, formulating a recommended course of action for the improvement of the user's emotional state by applying a second algorithm to said happiness-index and to a database of treatment options associated with the attributes of emotion received from the user.

However, Lonski teaches formulating a recommended course of action for the improvement of the user's emotional state by applying a second algorithm to said happiness-index and to a database of treatment options associated with the attributes of emotion received from the user (col.6, lines 38-47 and col.7, lines 19-25).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Snyder in view of Lonski by incorporating algorithms used to formulate Treatment Plans (Lonski col.7, lines 19-25)

in order to efficiently generate the best treatment plan to a given patient based on his/her collected data so that the system would increase the patient's chance for improvement.

Snyder in view of Lonski teaches the claimed limitations as discussed above.

Snyder further discloses,

Regarding claim 19, receiving attribute of emotion includes receiving said attributes of emotion as a written input (col.3, lines 28-34),

Regarding claim 20, receiving attribute of emotion includes receiving said attribute of emotion as a written input selected from a written list of emotional attributes (col.4, lines 29-41),

Regarding claim 22, the happiness-index is expressed in terms of a visual representation of rating enabling comparison to other generated happiness- indexes (col.6, lines 3-17),

Regarding claim 24, providing a recommendation includes providing said recommendation drawn from a data base containing an emotional profile similar to that of the user (col.9, lines 52-56).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Snyder in view of Lonski by incorporating a history database in order to store information related to patients' behavior data and corresponding treatment options so that the system would efficiently retrieve the best treatment plan for a particular patient by comparing the given data of

the patient with the stored information, thereby saving time and resources for the patient and/or caregiver.

Snyder in view of Lonski teaches the claimed limitations as discussed above.

Snyder further discloses,

Regarding claim 27, receiving updated attributes of emotion and associated weighting factors to be used by said algorithm in future happiness-index calculations (col.5, lines 44-56 and FIG 5),

Regarding claim 28, storing the inputted attributes of emotion, said associated weighting factors, said inputted emotional feeling and said recommendations into a collective emotional-profile data bank for the sake of improving future recommendations (col.5, lines 24-30 and col.6, lines 21-27).

- Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 4,931,934 in view of Lonski 6,338,039 and further in view of Shovers 5,696,981.

Regarding claim 21, Snyder in view of Lonski teaches the claimed limitations as discussed above.

Snyder in view of Lonski does not explicitly teach, receiving attribute of emotion includes receiving said attribute of emotion as a verbal input.

However, Shovers teaches, receiving attribute of emotion includes receiving said attribute of emotion as a verbal input (col.6, lines 58-65).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of

Lonski and further in view of Shovers by including a microphone as an input interface in order to allow the user to input data into the system by speaking into the microphone so that the necessary data would be collected more efficiently.

Regarding claim 23, Snyder in view of Lonski teaches the claimed limitations as discussed above.

Snyder further discloses, representation of rating is expressed in terms of an visual presentation (col.5, lines 10-19).

Snyder in view of Lonski does not explicitly teach, the representation of rating is expressed in terms of an audiovisual presentation

However, Shovers teaches, representation of rating is expressed in terms of an audiovisual presentation (col.6, lines 6-14 and lines 58-65).

Therefore, as already indicated above, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of Lonski and further in view Shovers by including a microphone as an input interface in order to allow the user to input data into the system by speaking into the microphone so that the necessary data would be collected more efficiently.

- Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 4,931,934 in view of Lonski 6,338,039 and further in view of Bair 6,108,665

Regarding claims 25 and 26, Snyder in view of Lonski teaches the claimed limitations as discussed above.

Snyder in view of Lonski does not explicitly teach, providing a recommendation includes providing an interactive communications link to a qualified psychological professional who provides said recommendation; providing a recommendation includes providing an interactive communications link to a group of individuals that provides support and assistance.

However, Bair teaches, providing a recommendation includes providing an interactive communications link to a qualified psychological professional who provides said recommendation (col.3, lines 3-10 and col.10, lines 37-47); providing a recommendation includes providing an interactive communications link to a group of individuals that provides support and assistance (see col.1, lines 7-11 and col.3, lines 50-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of Lonski and further in view of Bair by incorporating a sufficiently large database in order to evaluate and compare the patient's behavioral problems with the norms and display the treatment goals; and also by communicating with a health care worker such as a psychiatrist via the internet in order to conduct further evaluation of the patient's data and provide the most up-to-date treatment option.

Response to Arguments.

7. Applicant's arguments filled on 03/26/2009 have been fully considered. In the remarks,

(1) Applicant argues that Blair teaches a system that displays a treatment plan that has been previously prescribed and entered into the system by a medical professional for each patient . . . Blair is teaching a system that displays treatment plans prescribed and entered into the system database by medical personnel. There is no hint or suggestion of generating a recommended Course of action for the improvement of the patient's emotional health in an automated manner.

NOTE: - The reference referred to by the Applicant (in the Applicant's argument/remark) as "Blair" is believed to be a typographical error for "Bair" since there is no reference identified as "Blair" in the previous office action.

- In response to argument (1), the Examiner agrees that Bair's reference appears to be silent regarding the generation of a treatment plan in automated manner. Note that the currently presented claims also (e.g. see claim 18, part "d"), do not positively recite the generation of the treatment plan being automated or in any automatic manner. Thus, based on the broadest reasonable interpretation of the claimed limitations, for example part "d" of claim 1 may also be implemented manually since the claim does not necessarily require automatic implementation.

However, as already presented in the above section (*Claim Rejections - 35 USC § 103*), Lonski's reference does teach or suggest such generation of a treatment plan automatically based on the user's data. For example the line, "Alternatively, the caregiver may opt to instruct the **method and apparatus to automatically generate the Treatment Plan** (process described below) which is then combined with the "live" data previously entered by the caretaker, resulting in the "Treatment Plan Note." With

the aid of this information and the **Treatment Plan options generated by the method and apparatus** as shown in FIG. 8, the caregiver will define a Treatment Plan 40 as shown in FIG. 1 that **best fits the present needs of the patient.**" (col.6, lines 38-47), teaches or suggests that Lonski's system does generate a treatment plan to the patient automatically based on the collected data.

Therefore, as already indicated in the above section, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Snyder in view of Lonski by incorporating algorithms used to formulate Treatment Plans (Lonski col.7, lines 19-25) in order to efficiently generate the best treatment plan to a given patient based on his/her collected data so that the system would increase the patient's chance for improvement.

(2) Applicant argues that the "analysis" disclosed by Glenn is a longitudinal analysis of inputted data for the sake of assisting medical personal identify trends when prescribing medication . . . and therefore, there is no hint or suggestion of an automated generation of a recommended course of action for the patient as claimed in the present invention.

- In response to argument (2), the Examiner respectfully disagrees. Note that here also, the currently presented claims do not positively recite any limitation with regard to *automatically generating a treatment plan or a recommended course of action to the patient* as the Applicant indicated in the above argument. The use of a particular algorithm to generate an output does not necessarily mean that the step involves an automatic operation. Please see response to argument (1) for more detail.

In addition, Glenn's reference (US 2002/0150872) is not used to reject any of the claimed limitations in the previous office action (Final Office Action mailed on 01/17/2009). This reference was used in the First Office Action (Office Action mailed on 06/09/2008). However, due to the amendment made to the claims on 11/02/2008, a new grounds of rejection was established in the previous office action (Final Office Action mailed on 01/17/2009) that excluded Glenn's reference. Therefore, no response will be provided with respect to Glenn's reference.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruk A. Gebremichael whose telephone number is (571) 270-3079. The examiner can normally be reached on Monday to Friday (7:30AM-5:00PM) ALT. Friday OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bruk A Gebremichael/
Examiner, Art Unit 3715

/Cameron Saadat/
Primary Examiner, Art Unit 3715